

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal No. 201/06

Dated: 31st July, 2009

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. A.A. Khan, Technical Member**

IN THE MATTER OF:

**Haryana Power Generation Company Ltd.
Shakti Bhawan
Sector-6, Panchkula
Haryana**

..... Appellant

Versus

**Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001**

..... Respondent 1

**National Thermal Power Corporation Ltd.
NTPC Bhawan
Scope Complex
Lodhi Road New Delhi – 110 003**

..... Respondent 2

Counsel for the Appellants(s) : Mr. Neeraj Kumar Jain, Sr. Advocate
Mr. Sandeep Chaturvedi
Mr. Bharat Singh

Counsel for the Respondent(s) : Mr. M.G. Ramachandran,
Mr. Anand K. Ganesan &
Ms. Swapna Seshadri for NTPC

Per Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson

JUDGMENT

1. Haryana Power Generation Corporation (HPGC) is the Appellant herein. Challenging the Order dated 21/12/2000 passed in the main Petition as well as the Order dated 24/1/01 passed in the Review Petition have been challenged in this Appeal. By these Orders, the tariff for supply of energy to the Appellant by NTPC, the R-2 herein, was fixed by CERC, the Central Commission.

2. The challenge is, to a limited extent, that the CERC failed to exercise its jurisdiction in determining the tariff that is to be charged for the supply of energy in accordance with the provisions of the CERC Act, 1998.

3. According to the Ld. Sr. Counsel for the Appellant, after 15/5/99, the responsibility for fixing the status and regulating the same was that of the Central Commission. The R-2 herein, NTPC filed a Petition before the Central Commission seeking fixation of tariff and issuing the notification. It was under those circumstances that the main Order was passed on 21/12/2000 by the Central Commission. In the same Order, the Central Commission gave liberty to those who felt aggrieved by the main Order to file a Review, if the circumstances warrant. Accordingly, the Appellant as well as a host of other State Electricity Boards including the R-2 NTPC filed Review Petitions before the Central Commission, which in turn, dismissed all the Petitions on 24/4/2001 even without going into merits, on the ground that the Review was not maintainable. Therefore, the present Appeal has been filed as against the Orders dated 21/12/2000 as well as 24/4/01 passed in the Review

to a limited extent, with regard to the directions issued in para 1.4 and para 5 of the Order dated 21/12/2000. Through these directions, the CERC has shirked its responsibility of fixing the tariff after determining the parameters by allowing the ad-hoc levy of tariff to continue till 31/3/2001 without taking into consideration the complete change in the situation between 1990 and 2001. In this view of the matter, the Order dated 21/12/2001 is sought to be set aside.

4. The Ld. Counsel for the R-2 herein, NTPC while opposing the submission of the Ld. Senior Counsel of the Appellant would contend that the Central Commission has correctly decided the issue and held that it would not be fair to apply the fresh norms and parameters on retrospective basis. He further submitted that it has been clearly recorded in the main Order that the Central Commission would like to minimize the uncertainties and hardship regarding the tariff and for the said reason, the Central Commission avoided determining the tariff retrospectively. As such, the grievance expressed by the Ld. Sr. Counsel for the Appellant that the Central Commission has failed to exercise jurisdiction to determine the tariff for NTPC from the year 1998 onwards is not well-founded. It is also submitted that while the Commission passed the Order in dismissing the Review filed by all the parties including the Appellant and the R-2 NTPC, it gave valid reasons to hold that the same is not maintainable.

5. We have heard the Counsel for the parties and considered the rival submissions. We have also gone through the main Orders and the other records.

6. A perusal of the main Order dated 21/12/2000 passed by the Central Commission would bring to light two aspects:

- i. Determination of the norms and parameters for the fixation of tariff applicable for the period 1/4/2001 to 31/3/2004;
- ii. Continuation of norms and parameters prevalent as per the notification of the Central Government with regard to tariff determination for the period till 31/3/2001.

7. From a perusal of the main Order dated 21/12/2000, it is clear that the Central Commission has directed while determining the norms and parameters of the tariff, that the existing tariff notifications issued by the Central Government for the existing generating companies shall continue and for the new generating stations, which were commissioned later, the norms and parameters as contained in the said notification are to be applied to the similarly placed stations. The Central Commission has further directed that 90% of the tariff so computed has to be paid to the NTPC by the beneficiaries as provisional tariff. On the basis of these directions, the final Order was passed by the Central Commission on 21/12/2000, determining the various norms and parameters applicable to the generating companies including the R-2 NTPC for the period 1/4/01 onwards. For the period prior to 31/3/04, the Central Commission has held as under:

“1.4.2. The Commission would like to minimize uncertainty and hardship regarding tariff. It would also like to avoid determining the tariff retrospectively. Hence, the terms and conditions, and norms notified in these Orders shall be applied uniformly to all stations from 1/4/01. In all the cases

where the tariff was determined earlier under Government notification or provisionally, shall continue to apply till that time. Wherever provisional tariff was determined with partial payment, the same is now confirmed. As such, where partial payment was being made while awaiting final determination, full payment will now be made on demand by the utilities.

1.4.3. If this Order creates any unfairness or hardship, the parties may approach the Commission for redressal within 60 days of issue in accordance with the provisions of review as contained in Regulation 103, Conduct of Business Regulations.”

8. Aggrieved by the observation contained in 1.4.2, the present Appeal has been filed by the Appellant, contending that the Central Commission ought to have applied fresh norms and parameters determined by the Central Commission through the Order dated 21/12/2000 from the year 1998 onwards i.e. from the enactment of the ERC Act.

9. We are unable to accept the above contention for the following reasons:

- i) The Central Commission has gone into the matter specifically deciding that it would be unfair to apply fresh norms and parameters retrospectively, with the generating stations being unable to arrange those affairs with regard to fresh norms and parameters.
- ii) The Central Commission has continued the application of norms and parameters as notified by the Government of India prior to the enactment of the ERC Act. These norms were also statutorily determined and notified by the Central Commission. The

determination as per the notification, cannot be said to be unfair or unjustified.

- iii) The Central Commission has given a specific reason in the main Order that it would like to minimize uncertainty and hardship regarding tariff and also for that reason, the Central Commission would be inclined to avoid determining the tariff retrospectively.
- iv) The Central Commission applied its mind and it decided to apply the norms and parameters as specified in the notification issued by the Government of India and determined the tariff accordingly. As such, this would amount to determination of tariff by the Central Commission itself.
- v) Even for the period up to 31/3/01 the Central Commission has determined the actual tariff payable for each generating station for applying the norms and parameters as specified in the Government of India notifications which the Central Commission had decided to continue till 31/3/01 for valid reasons given in the Order dated 21/12/2000.
- vi) It is true that liberty was granted under para 1.4.3 by the Central Commission to file a Review Petition if provided there is any hardship etc. But it specifically stated in the Order that the Review Petition must be filed only under Regulation 103 of the Conduct of Business Regulations of the Central Commission, which is corresponding to Section 114 and Order 47 of the Civil Procedure Code (CPC). In accordance with the said liberty in para

1.4.3 of the impugned Order, many parties including the Appellant and the R-2 NTPC had filed Review Petitions before the Central Commission, which in turn dismissed the same on 24/4/2001. On going through this Order, it is evident that the Central Commission has given liberty for filing Review only on account of the hardship and the liberty is not for revisiting the principles determined by the Central Commission. As a matter of fact, liberty was given only in regard to partial payment of tariff allowed earlier. The relevant observations in the Order are as follows:

“The liberty granted to the parties to seek review of the Order is in the context of directions contained in para 1.4.2 according to which partial payment of tariff allowed earlier has now been made full payment. The parties affected may seek review limited to this direction.”

- vii) Further, these norms fixed by the Central Commission was statutorily determined by the Central Government in exercise of the powers under Section 43(A) of the Electricity Act (Supply) 1948. These norms had continued for a long time and the Appellant had paid tariff as per the same. Therefore, it cannot be complained that there is any hardship within the meaning of para 1.4.3 of the Order.

10. The Ld. Counsel for the Respondent would bring to the notice of this Tribunal that in pursuance of the Orders mentioned above, i.e. both the Orders dated 21/12/2000 and 24/4/2001 respectively, the Central Commission determined the tariff for the period up to 31/3/01 as per Government notifications; for the period from 1/4/01 to

31/3/04 as per the Tariff Regulations 2001, and for the period from 1/4/04 to 31/3/09 as per Tariff Regulations 2004, and as such above tariff Order relating to the tariff for generating stations with which the Appellant is concerned have become final and the matter stands settled.

11. In view of the above, there is no merit in the Appeal. Accordingly, the Appeal is dismissed. No costs.

(A.A.Khan)
Technical Member

(Justice M.Karpaga Vinayagam)
Chairperson

Dated: 31st July, 2009

REPORTABLE / NON-REPORTABLE